

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING )  
PHARMACY, INC. PRODUCTS LIABILITY )  
LITIGATION )

MDL No. 1:13-md-2419-RWZ

THIS DOCUMENT RELATES TO: )

ALL CASES. )

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**PLAINTIFFS' STEERING COMMITTEE'S REPORT TO THE COURT REGARDING  
LEXECON ELECTION FORMS AND REQUEST FOR ADDITIONAL TIME TO FULLY  
RESPOND TO THE COURT'S ORDER REGARDING  
THE PARTIES' LEXECON ELECTIONS**

1. The PSC has received over 1200 party responses to the Court's July 9, 2015

Order.

In its Order dated July 9, 2015 ("Order") this Court ordered every party to a non-Massachusetts underlying action, including all plaintiffs, to execute either a *Lexecon* waiver consenting to trial in this district or a certification that the party will not waive its *Lexecon* rights. Parties were required to send their *Lexecon* elections to the Plaintiffs' Steering Committee ("PSC"), which in turn is required to file a table of all non-Massachusetts cases summarizing which parties waive *Lexecon* and which do not.<sup>1</sup>

The PSC has now received more than 1200 responses from individual parties in the MDL.<sup>2</sup> The PSC's table of elections received is attached hereto as Exhibit A. Copies of the individual election forms the PSC received are attached hereto as Exhibit B. A quick review of the table reveals that only one defendant, involved in a small set of cases that have been settled

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<sup>1</sup> Doc. 2075.

<sup>2</sup> Some election forms contain elections for multiple parties. Each individual party election is a separate line item on the PSC's report, in accordance with the format prescribed in the Order.

(but not yet dismissed), has waived *Lexecon*.<sup>3</sup> As a practical matter, this means that, thus far, there are no active cases in which all parties have waived *Lexecon*.

2. Request for additional time to identify additional cases and parties.

The deadline for parties to submit *Lexecon* election forms to the PSC was Monday, July 27, 2015. The table showing all the elections was completed on an Excel spreadsheet (attached as Exhibit A) in the afternoon of Friday, July 31, 2015.<sup>4</sup> The table is a reflection only of the election forms that have been received. The Court's Order also requires that cases be identified for which no election has been submitted by any party. Given the volume of information involved, and the need to complete a comparison of the 1200 party responses against an up-to-date survey of all cases currently pending in the MDL, the attached report does not yet identify cases for which no *Lexecon* election was submitted. A great deal of work is also necessary to identify individual parties who have been named in one or more cases pending in the MDL but have failed to submit an election form as required by the Order. Upon completion of the table based on current submissions, there was little time for the additional analysis required to identify these additional cases and parties prior to the deadline set by the Court for this report.

In order for the PSC to identify all cases for which no election has been made by any party, and identify all parties that have not yet submitted an election, the PSC respectfully requests an additional seven days to conduct the necessary research and submit an updated report.

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<sup>3</sup> The sole defendant waiving *Lexecon* is Insight Health Corp., a defendant in cases from Virginia for which a settlement agreement is in place. The *Lexecon* election forms were filed in eight wrongful death cases only because a final order dismissing those eight cases is pending completion of final requirements under Virginia law. It is most likely these cases will be dismissed this Fall, and they will never go to trial.

<sup>4</sup> The table currently contains over 1200 line entries on approximately 80 pages of Excel spreadsheet.

Dated: July 31, 2015

RESPECTFULLY SUBMITTED,

**/s/ Patrick T. Fennell**

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**CERTIFICATE OF SERVICE**

I, Patrick T. Fennell, hereby certify that I caused a copy of the above *Plaintiffs' Steering Committee's Report to the Court Regarding Lexecon Election Forms and Request for Additional Time to Fully Respond to the Court's Order Regarding the Parties' Lexecon Elections*, to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access this filing through the Court's system, and notice of this filing will be sent to those parties by operation of the Court's CM/ECF system.

Dated: July 31, 2015

/s/Patrick T. Fennell  
Patrick T. Fennell, VSB 40393